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No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

IN THE MATTER OF
WILLIAM J. BRIGGS, PETITIONER

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF INDIANA

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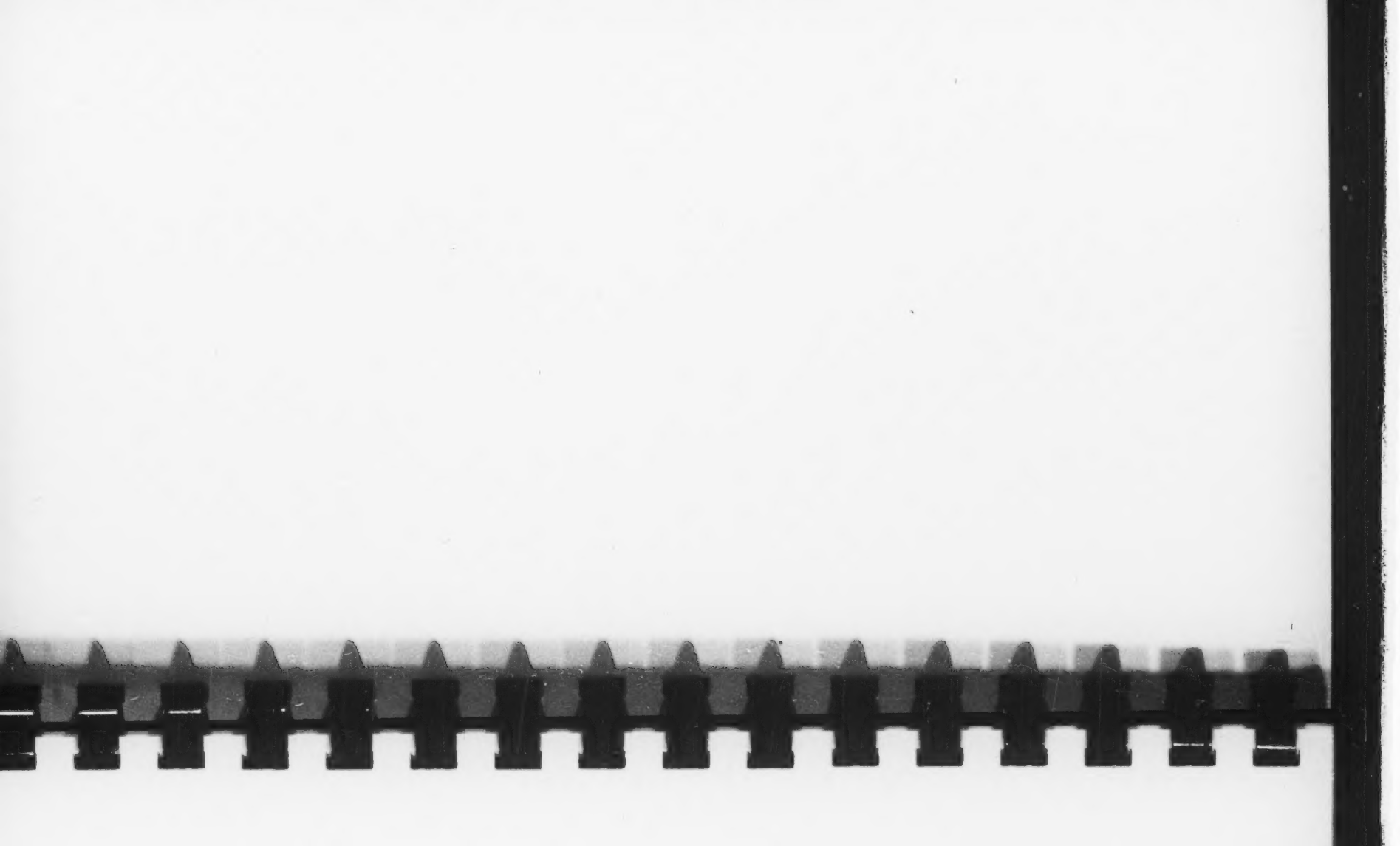

QUESTIONS PRESENTED

1. What constitutional rights do attorneys have in Disciplinary Actions?

2. Whether the right to speedy trial under 6th Amendment and due process protection against delay under 5th and 14th Amendments must be provided in disciplinary proceedings? And if so to what extent?

3. Whether exercising diligence to prevent delay in prosecution of disciplinary actions untimately rests with State or accused?

4. Whether unjust delay in prosecution of a disciplinary action supports dismissal of charges or mitigation of punishment? And if so, whether this case should be dismissed or punishment mitigated?

5. Whether a long delay grossly in excess of 60 day time limitation for holding hearing under Indiana Disciplinary Rule 23, Section 13 violated the rules by delaying so far beyond the scope of authority that due process was denied and the court lost jurisdiction?

6a. Whether right to redress for grievance includes right to raise constitutional issues by pre-trial motions?

6b. Whether right to redress for grievance for constitutional issues includes right to pre-trial hearing or right to bifurcated trial hearing?

7. Whether requiring Petitioner to proceed to trial in this case:

(a) denied right to speedy trial, fair trial, meaningful opportunity to be heard, right to timely redress for constitutional guarantees and constituted fundamental error resulting in denial of due process of law as guaranteed by Amendments 5 and 14 and denial of right to redress under Amendment 1, under U.S. Constitution,

(b) posed so many threats to constitutional rights that they could not be eliminated by presentation as defenses at the trial,

(c) denied due process of law and equal protection under 5th and 14th Amendments because delay produced loss of evidence and denied right to an adequate record which denied effective judicial review on appeal as guaranteed to others?

8. Whether processing this disciplinary proceeding over a ten year period resulted in such excessive punishment and irreparable harm that it falls within the prohibitions for cruel and unusual punishment protected under Amendment 8 to the U.S. Constitution?

LIST OF PARTIES

The parties below are as follows: (1) William J. Briggs, Petitioner herein, Respondent below, (2) The Disciplinary Commission of the Indiana Supreme Court, as an arm of that Court, which filed the Disciplinary Complaint against the Petitioner herein, (3) The Attorney General of the State of Indiana is being served with copies of the Petition for Writ of Certiorari.

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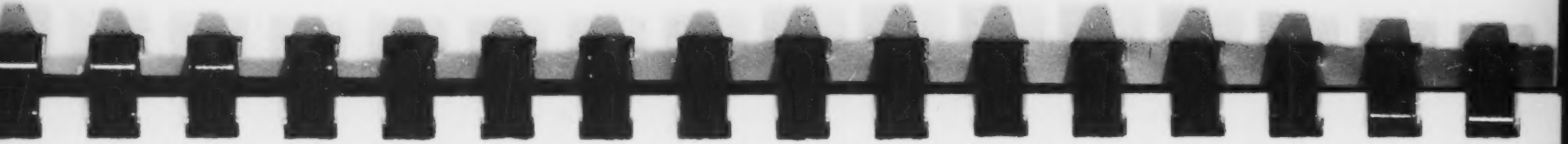

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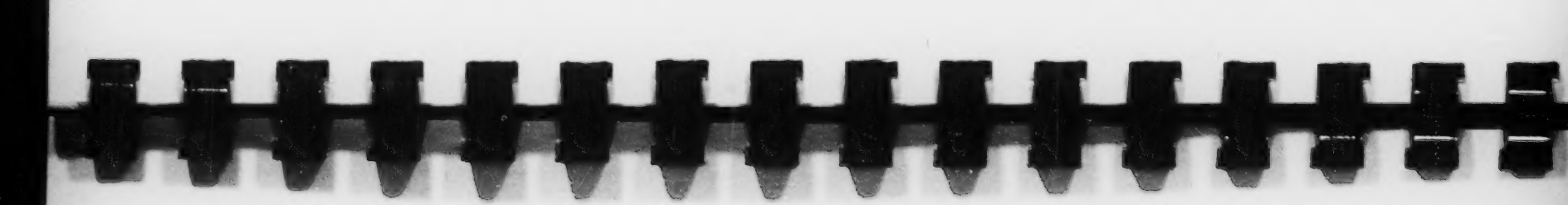

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No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

IN THE MATTER OF
WILLIAM J. BRIGGS, PETITIONER

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF INDIANA

William J. Briggs, pro se respectfully petitions for writ of certiorari to review the judgment of the Supreme Court of Indiana entered in the above proceeding on January 13, 1987.

DECISIONS BELOW

The judgment of the Supreme Court of Indiana (is included in App.B) is reported at 502 N.E.2d 879. The report of the hearing officer (is included in App.C) is not expected to be reported.

JURISDICTION

The judgment of the Indiana Supreme

Court (App.B) was entered on January 13, 1987. A petition for temporary stay (App.E) was denied on February 12, 1987. A joint Petition For Modification of the judgment (to reduce suspension time and/or to have suspensions served sequentially rather than concurrently) (App.E) was denied on February 25, 1987. On April 6, 1987, Justice John Paul Stevens extended the time within which to file a petition for writ of certiorari to June 12, 1987. The jurisdiction of this Court is invoked under 28 USC Sec. 1257 (3).

CONSTITUTIONS, COURT RULES,

The following Amendments to the United States Constitution provide in relevant part:

1st Amendment

> Congress shall make no law ... abridging the right ... to petition ... for a redress of grievances.

5th Amendment

> No person shall ... be deprived of life, liberty or property, without due process of law....

6th Amendment

> ...the accused shall enjoy the right to a speedy ... trial, ...

8th Amendment

> ....nor cruel and unusual punishment inflicted.

14th Amendment

> ...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny...equal protection...

Article 7 Sec. 4, Indiana Constitution

> The Supreme Court shall have no original jurisdiction except in admission to the practice of law; discipline or disbarment of those admitted....

Indiana disciplinary rule AD 23 provides in relevant part:

> R.A.D 23, Sec. 13
>
> ...hearing officers shall have the power and duty to:
> (a) Conduct a hearing on a complaint of misconduct within sixty (60) days after the

hearing officer is appointed and has qualified;

(b) Receive evidence and make written findings of fact and recommendations to the court;

R.A.D. 23, Sec. 14(a)

(a) The rules of pleading and practice in civil cases shall not apply. No motion to dismiss or dilatory motions shall be entertained...

R.A.D. 23, Sec. 14 (e)(f)

(e) The proceedings may be summary in form and shall be without the intervention of a jury and shall be reported.

(f) ...hearing officers shall determine whether misconduct has been proven...and shall submit to the Supreme Court written findings of fact. Recommendations concerning the disposition of the case may be made by the hearing officer in discretion.

R.A.D. 23, Sec. 15 (a)

(a) The respondent or Commission shall have thirty (30) days after the filing of the hearing officer's finding and recommendation to petition for review of the same before the Supreme Court. If no petition for review is filed within thirty (30) days of the finding and recommendation of

the hearing officer the Supreme Court shall enter judgment or such other appropriate order in the premises.

STATEMENT OF THE CASE

Nature of case: This Disciplinary Action grew out of a grievance initiated by two lawyers associated with a former client of Petitioner. Simultaneously in July, of 1977, they filed a grievance and commenced civil litigation which has been highly profitable to the lawyers. The grievance grew out of a long historical background of friendship and legal services to the former client commencing about 1965. Some of the second Amended Complaint (not filed until 1983) proceeded upon the theory of violations of the old pre-1970 American Bar Association Canons. (App.A-6, and App.C-86).

Course of Proceedings: The deposition of the former client, Mary Bernice Smoker, was taken in late 1977.

In October, 1978, the complaint was filed, the first hearing officer was appointed, and in November, 1978, the Petitioner answered the Complaint. The docket sheet reflects no action by the Disciplinary Commission for the next 30 months until after the death on August 31, 1981 of the first hearing officer. No hearing was ever held by the first hearing officer. The officer who finally heard the case was not appointed until 6 months later on February 24, 1982. The former client, Mary Bernice Smoker, died in November of 1979. The second Amended Complaint was not filed until July of 1983, which was 16 months later, although it was authorized by Disciplinary Commission members in July of 1982. The Commission denied responsibility for long delays by alleging heavy work load and scheduling problems. The Commission's attempt to blame Petitioner for delay was based on the

theory that James Stewart, former attorney for Briggs, had agreed to an informal postponement of disciplinary proceedings pending the outcome of civil litigation. The disciplinary trial was delayed until July, 1984, at which time James Stewart, attorney for Briggs, was deceased. All civil litigation ended in 1980, and the Disciplinary Commission did not file its Amended Complaint until July, 1983, about 30 months later which was very shortly after the death of attorney James Stewart. The third amended complaint was not filed until June of 1984, about 30 days before the trial commenced in July of 1984.

No pleadings were filed by either the Disciplinary Commission or the Petitioner requesting that the proceedings be expedited. It was about 7 years from the grievance in July, 1977 until the trial in 1984. The Hearing Officer's Report was

filed in January, 1985. Two years later in January, 1987, the judgment of suspension was entered. It took 10 years to process this case form grievance to judgment.

Raising of Constitutional Issues: About August 19, 1983, Petitioner filed his response to the second Amended Complaint filed July, 1983. By his response, Petitioner raised numerous constitutional issues including those which are presented in this petition.

On or about May 7, 1984, Petitioner filed an extensive petition -- **PRESENTATION OF CONSTITUTIONAL ISSUES AND ERRORS -- PETITION FOR HEARING, ORAL ARGUMENT.** (App.F). This pleading gave notice that Petitioner's constitutional protections could not be eliminated by a hearing on the merits. The Petitioner requested a pre-trial hearing, an opportunity to present evidence and oral

argument. This pleading was filed with Hearing Officer Morton as well as the Indiana Supreme Court. About 30 days later on June 4, 1984, before the hearing on the merits, the Indiana Supreme Court entered a cursory Order denying the May 7th pleading. (App.F-34). It denied oral argument, right to present evidence, oral argument and a separate hearing on constitutional protections although the pleading specifically requested a separate hearing to satisfy right to redress under the 1st Amendment. (App.F-4).

In a memorandum with supporting affidavits attached to the May 7, 1984 pleading, Petitioner filed an affidavit showing that at least 23 witnesses were dead or unavailable for trial. Eventually several others were unavailable and most others, including the Commission's Executive Secretary, professed lack of recall for facts so long ago. By an

Affidavit of Events, Petitioner showed the long history of this case including the delay.

The Indiana Supreme Court refused to acknowledge the existence of constitutional problems. Petitioner was required to proceed to trial and was forced to sandwich-in his numerous and complex constitutional objections during a lengthy trial, already complicated by complex issues and the court overruling Petitioner's objection, to being tried jointly with his wife. (App.G).

Result Below: The trial was completed before Hearing Officer Morton who rendered his report in January, 1985. The hearing officer stated in his report (App.C-147) "[Respondent's]...background of years of services to the Carroll County Bar must be weighed in his favor; while he lost his perspective in this one matter, he would appear to be a minimal risk to

the public." The hearing officer recommended in his report (App.C-147) a 6 month suspension for William J. Briggs. The Supreme Court of Indiana in rendering its judgment of January 1987, increased the punishment for Florence Anne Briggs from a reprimand to "not less than one year suspension" and increased the punishment for William J. Briggs from 6 months to a two year suspension. (App.B-46) Both suspensions began at the same time on February 16, 1987. Petitioner filed on January 29, 1987, (App.E-1) Petition for a Temporary Stay of Court's decision which was denied by Order entered February 12, 1987. (App.E-9). Petitioner filed on February 2, 1987, (App.E-11) Petition For Modification of Court's decision which was denied by Order entered on February 25, 1987. (App.E-16). The joint suspension harshly closed the law office door of William J. Briggs and

Florence Anne Briggs on almost 29 years of law practice and left this family without means of support or sustenance. Additional background is found in the report of the hearing officer and Parts F, G, and H of this Petition.

REASONS FOR GRANTING THE WRIT

WHAT 5TH AND 6TH AMENDMENT RIGHTS DO ATTORNEYS HAVE IN DISCIPLINARY ACTIONS?

Part A

SUMMARY OF PROBLEM

Although it is generally agreed that disciplinary proceedings against attorneys are "quasi-criminal" in nature, In re Ruffalo, 340 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968), there is much disparity among Circuits and States as to

what constitutional rights attach to those proceedings by virtue of that status. Conceding that many courts view the primary purpose of disciplinary proceedings to be the protection of the public, see e.g., In re Weinstein, 254 Or. 392, 394, 459 P.2d 548, 549 (1969), cert. den., 398 U.S. 903, 90 S.Ct. 1689, 26 L.Ed.2d 61 (1970), however, because disbarment and suspension are punishments which deprive the individual of valuable property rights, it is well-established that attorneys are entitled to some form of procedural due process during these proceedings. Ruffalo, supra. The question presented here is: what is the scope of the process that is due attorneys? While notice and opportunity to be heard are clearly included within such due process, Circuits and States vary as to the meaning of these terms as well as to whether other protections are due.

This Court should grant certiorari to clear up these issues by defining what rights attach to quasi-criminal disciplinary proceedings which potentially deprive individuals of their livelihoods. While attorneys, from their earliest law school courses, are trained to recognize what rights potential clients may rely on, under current law, attorneys themselves are uncertain as to which rights they possess when accused of wrongdoings in disciplinary actions. This important issue should now be addressed by this Court so that others in Petitioner's position will be able to turn to an organized body of case law to determine how to protect their interests which a State seeks to deprive.

Part B

DECISIONS DIVIDED -- CLARIFICATION NEEDED
NO BODY OF LAW

Decisions are Divided -- No Body of Law -- States and Circuits are Confused as to Which Law and What Process is Due in

Disciplinary Proceedings -- Clarification Needed -- Confusion and Lack of Body of Law Encourages Arbitrary and sui generis Decisions and Denial of Constitutional Rights.

State disciplinary and disbarment proceedings are comparable to criminal proceedings, see Person v. Ass'n of Bar of City of New York, 554 F.2d 534, 536 (2d Cir. 1977), because they have consequences which remove them from the ordinary run of civil cases. In both criminal and disciplinary proceedings the accused is subject to punishment. See Matter of Abrams, 521 F.2d 1094, 1099 (3d Cir. 1975). Because disbarment means deprivation of livelihood, see Steadman v. S.E.C, 603 F.2d 1126, 1138 (5th Cir. 1979) "[i]t is only fair and just that the government not subject any person to such drastic divestment [of livelihood] without affording him substantial due process of law. In re Ming, 469 F.2d 1352, 1355 (7th Cir. 1972) (emphasis added).

> [I]n view of the gravity of the punishment of [disciplinary proceedings] ... which includes stiff fines, or even suspension or disbarment with all the consequential damage which that entails, the test that must be employed as to the constitutionality of the disciplinary machinery to be used must be a very severe one. In re Bithoney, 486 F.2d 319, 323 (1st Cir. 1973) (emphasis added).

Due to the potentially severe punishments involved, Petitioner advocates the view of Justice Black, Justice Douglas and the 1st Circuit that courts should use the "strictest possible due process standards for the procedures used to carry out necessary bar discipline." Id; see also Law Students Civil Rts. Res. Coun., Inc. v. Wadmond, 401 U.S. 154, 174, 91 S.Ct. 720, (1971) (Black J. dissenting).

Courts vary as to whether even minimal process is due. For example, while the 4th Circuit holds that procedural due process in a disbarment proceeding does not require that a hearing

be given to the attorney involved, see In re Chipley, 448 F.2d 1234, 1235 (4th Cir. 1971), the 5th Circuit holds that the minimum protections of due process in such proceedings include a hearing. Steadman v. S.E.C., 603 F.2d 1126, 1138 (5th Cir. 1979). Although the 5th Circuit holds that due process in disciplinary proceedings includes the right not to testify against oneself, Id., the 7th Circuit holds that the right against self-incrimination is not applicable in disciplinary proceedings. See In re Daily, 549 F.2d 469 (7th Cir. 1977). Even the standard of proof that is required in such proceedings is confused as many jurisdictions use a preponderance standard while other jurisdictions use a higher standard. See 7 C.J.S. Attorney & Client Sec. 33a(3) (1937 & Supp. 1979). The Hearing Officer in the instant Briggs case reported using "the clear and convincing

test" (App.C-86) but he did not do so on one of his most important evidentiary findings. (See Part H of this Petition under Harm to Appellant.)

State courts are also confused as to what the Federal Constitution mandates with respect to disciplinary proceedings. California suggests that procedural due process in quasi-criminal disciplinary proceedings includes notice and opportunity to be heard, the opportunity to present a defense, the opportunity to engage in discovery, and the opportunity to present evidence prior to the imposition of discipline. See In re Strick, 34 Cal.3d 891, 196 Cal.Rptr. 509, 671 P.2d 1251 (1983). Pennsylvania, while asserting that some due process rights do exist, views disciplinary actions as almost exclusively civil in nature and afford attorneys little or no constitutional protections during the

proceedings. See In re Oxman, 437 A.2d 1169 (Pa. 1981), cert. den., 456 U.S. 975. For example, Pennsylvania holds attorneys have no 6th Amendment right to a speedy trial in disciplinary proceedings.

A strong example of the confusion as to what body of case law, and hence what rights, apply to disciplinary actions is the Colorado case of People v. Harfman, 638 P.2d 745 (Colo. 1981). The Harfman court noted,

> "[d]isciplinary proceedings, in our view, are not criminal... [but rather, are] sui queris, and rules for civil, criminal, and administrative proceedings do not automatically apply ...thus, we must make a case-by-case analysis of every disciplinary complaint to determine whether a particular rule of civil or criminal law should be applied." Id. at 748.

A confused state of affairs also exists in Indiana, the State at issue, which forces accused attorneys to guess at which protections are available. The Supreme Court of Indiana has noted:

> "[P]revious decisions have recognized the unique character of [disciplinary] proceedings and resolved issues of constitutional application within the framework of this understanding. ...[T]he rules of pleading and practice in civil cases shall not apply. ...[T]his Court has also held that a disciplinary proceeding is not a criminal proceeding. (citations omitted). Thus, the application of constitutional standards generally afford a criminal defendant are not appropriate. Matter of Roberts, 442 N.E.2d 486, 988 (Ind. 1982) (emphasis added).

Because the rules of civil procedure do not apply, an Indiana attorney in a disciplinary case is denied the right to file a "Motion to Dismiss for Delay under Indiana Trial Rule 41 (E)." Since it is not a criminal action, an Indiana attorney cannot file a "Motion to Dismiss for Delay under Indiana Criminal Rule 4." The Indiana Supreme Court apparently intended to make every effort to deny procedural remedies to its lawyers when it adopted disciplinary rule: Ind. R.A.D. 23, Section

14(a) which provides, "...no Motion to Dismiss or dilatory motion shall be entertained...."

In the Hearing Officer's Report in the instant Briggs case he states, (App.C-137)

> "....the rules limiting preliminary or dilatory proceedings make fact-finding hearings with constitutional or precedural issues to preserve a bit unwieldy. Upon originally misreading In the matter of Zarko Cekerez 458 NE2d 229, (1984), this officer felt that he could not separate substantive and procedural matters into two such hearings although, at this juncture, [at this juncture meant that the Hearing Officer's conclusions were made after the trial and too late to benefit this Appellant] it would appear that an officer does and should have such opportunity within his sound discretion; and (3) our present reporting methods of publishing only those cases where misconduct is determined makes citations of Indiana authority for either substantive or procedural matters favoring respondents extremely rare; no balancing determination of proper activity by counsel in difficult areas of the law are printed so that re-

> spondent ends up resorting to other jurisdictions for authority. In the long term, this may create an imbalance, inviting federal interference on due process gounds; ..." (emphasis added) (App.C-137).

Hence, States such as Indiana and Arizona have unfettered discretion to deny or afford rights which amounts to no law -- as Hearing Officer Morton said, there are no printed decisions for many Disciplinary cases processed by the Indiana Supreme Court. (emphasis added).

For a nation which professes to be highly civilized with its historical background of reliance on rules of law, current procedure in disciplinary actions represents a step-back of several centuries and bears resemblance to Star Chamber Proceedings. Attorneys are in a "Catch 22" situation; they may turn to neither civil nor criminal law when seeking to establish their defenses. In essence, accused attorneys are forced to

guess which rights they may have when defending their livelihood, and must await the Court's decision to determine whether or not they were justified in asserting those rights. In Indiana an attorney's rights are even more muddied. The Hearing Officer as an arm of the Indiana Supreme Court; hears the case, makes preliminary findings of facts and law, determines misconduct if any, and recommends punishment. Objections by an attorney are permitted to the Hearing Officer's report, but the Indiana Supreme Court is a court of original and final jurisdiction with no appeal. It is not required to accept the Hearing Officer's findings or recommendations. This doubles the attorney's quandry over whether to file objections to the Hearing Officer's report. Even if the attorney agrees with it, objections must be filed before he knows if the Indiana Supreme Court will

accept the Hearing Officer's report. The present state of affairs in disciplinary proceedings is unfair and highly prejudicial to the individual when determining how to best present his defense. To prevent attorneys from any further guessing as to which rights they have in disciplinary proceedings, this Court should grant certiorari and specify what the Constitution demands in these proceedings.

Part C
RIGHT TO SPEEDY TRIAL AND DUE PROCESS PROTECTION AGAINST DELAY MUST ATTACH IN DISCIPLINARY PROCEEDINGS

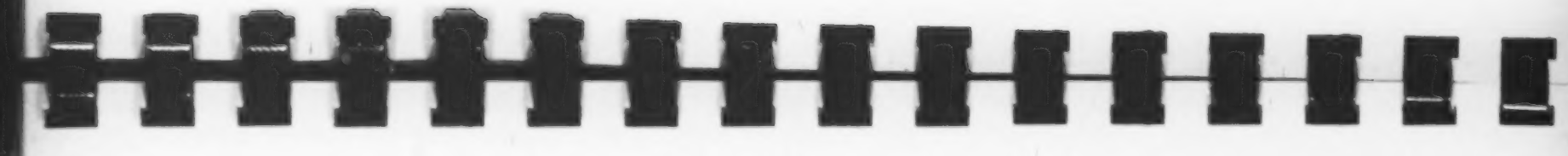
Disciplinary Proceedings are Comparable to Criminal Proceedings -- Speedy Trial Must Attach to Preserve the Attorney's Due Process Right to Present an Adequate Defense -- Speedy Trial Must Attach to Effectuate Policy Underlying Proceedings.

The use of "quasi-criminal" to categorize disciplinary proceedings allows courts to avoid answering the question as to what rights attach, and increases ad hoc as well as sui generis decisions.

Disciplinary Proceedings are quite comparable to criminal proceedings. Erdmann v. Steven, 458 F.2d 1205, 1209 (2d Cir. 1972); see Person v. Ass'n. of Bar of City of New York, 554 F.2d 534, 536 (2d Cir. 1977). In both criminal and disciplinary proceedings, the accused is subject to punishment. See Matter of Abrams, 521 F.2d 1094, 1099 (3d Cir. 1975). Although incarceration is not an available sanction, other highly important rights are taken. The State can deprive the attorney of his license to practice law. This deprives an American citizen of one of his most cherished property rights and divests him of his very livelihood. "Suspension from the practice of law is a deprivation of 'liberty' or 'property' within the meaning of the Due Process Clause...". State ex rel. Roberson v. Oregon, 632 P.2d 1255 (Or. 1981). Procedural due process requires that "one

whom it is sought to deprive of such rights ... be given an opportunity to defend himself; and the proceedings looking toward deprivation must be essentially fair." Annot: Suspension or Revocation of Medical or Legal Professional License as Violating Due Process - Federal Cases, 98 L.Ed. 851, 855 (1953). "It is not the issue of whether a lawyer ... is entitled to due process ... but, instead, whether ... he has, in fact, been afforded such due process." Id. at 852 (emphasis in original).

Disciplinary proceedings are designed to protect the public, In re Ruffalo, 390 U.S. at 550, by stripping a wrondgoing attorney of his ability to represent to the public that he is in "good standing" to practice law. See Theard v. United States, 77 S. Ct. 1274, 354 U.S. 278, 281, (1956).



Although this Court has never held expressly that the right to a speedy trial attaches to State disciplinary proceedings it should now do so. Petitioner seeks this Court's holding that he had the right to a speedy trial under the 6th Amendment in this disciplinary action, or, in the alternative, that such unjustified delays by the State of Indiana in prosecuting his case were so fundamentally unfair as to violate the Due Process Clause of the Fifth Amendment.

C.1. Delay in Disciplinary Actions Undermines Policy of Protection to the Public.

The few states that have denied attorneys the right to a speedy trial in disciplinary actions have gravely misconstrued the rationale underlying disciplinary proceedings. A proper policy favors handling attorney discipline with dispatch in order to effectuate the underlying policy of protection to the

public -- so that the public will truly be protected from wrongdoing attorneys.

States that deny attorneys the right to a speedy trial in disciplinary actions do so because "it would not be in the public interest to dismiss [a] disciplinary proceeding for no reason other than the Bar's failure to prosecute them with proper dispatch." In re Weinstein, 254 Or. 392, 384, 459 P.2d 548, 549 (1969); see also, In re Oxman, 437 A.2d 1169, 1172 (Pa. 1981). However, other states have expressly recognized that in order to effectuate the "protection of the public" rationale of disciplinary actions, "disciplinary proceedings should be handled with dispatch." The Florida Bar v. Randolph, 238 So.2d 635, 638 (Fla. 1970); see also In re Smith, 75 Ill.2d 134, 25 Ill. Dec. 660, 387 N.E.2d 316 (Ill. 1979); People ex rel. Colorado Bar Ass'n v. Tanquary, 48

Colo. 122, 109 P.260 (Colo. 1910); Giddens v. State Bar of California, 170 Cal.Reptr. 812, 621 P.2d 851, 855 (Cal. 1981) (Richardson, J., dissenting). The reason "[i]t is desirable and in the public interest that attorney disciplinary proceedings move expeditously...", In re Smith, 387 N.E.2d at 319, has been set out clearly by the Florida Supreme Court where it noted:

> "Such inordinate delays are indeed unfair and even unjust to one accused. They permit violaters to remain active in practice. They dim the memories of witnesses. They mar effective and efficient enforcement of the canons of ethics. Worst of all, perhaps they undermine the public confidence in the bar's announced determination to keep its own house in order. The Florida Bar v. Randolph, 238 So.2d at 638."

Consistent with this policy, the same court a few years later noted:

> [Despite the fact that the attorney was partly responsible for the lapse in proceedings,]

> we are convinced that the overall lapse of time involved in these proceedings of four years has largely nullified any benefit to the public and the Bar to be achieved by disbarment or suspension of [the attorney]..... Disciplinary proceedings are instituted primarily in the public interest and to preserve the purity of the Bar. Those interests will not be served at this late date by [the attorney's] suspension. The Florida Bar v. Welch, 272 So.2d 139, 141 (Fla. 1972) (emphasis added).

Regardless of whether a holding is based on the right to a speedy trial or due process, the United States Supreme Court should now follow the above or a similar rationale and hold that in a disciplinary proceeding unjustified delay by a state in prosecution or in discipline nullifies any benefit to the public and the bar.

C.2. Delay in the Prosecution of Disciplinary Actions Eliminates the Individual's "Meaningful" Opportunity to be Heard, May Result in Lost Evidence Denies Effective Judicial Review, and Supports Dismissal of the State's Action or Mitigation of Disciplinary Sanctions.

This Court has recognized that the Sixth Amendment right to a speedy trial is "one of the most basic rights preserved by our Constitution." Dickey v. Florida, 398 U.S. 30, 32, 26 L.Ed.2d 26, 90 S.Ct. 1564 (1970). This Court has also recognized that "[t]he right to due process reflects a fundamental value in our American Constitutional system." Boddie v. Connecticut, 401 U.S. 371, 374, 28 L.Ed.2d 113, 117, 91 S.Ct. 780 (1971). Because disciplinary proceedings are "quasi-criminal" in nature, various states have felt free to conduct disciplinary actions as amorphus proceedings which deny individual attorneys fundamental rights. "Where the protections of the U.S. Constitution conflict with the efficientcy of the system to ensure professional conduct, the Constitution must prevail and the system must be modified to conform." Polk v. State Bar of Texas, 374 F.Supp.

784, 785-87. Because of the uncertaintly as to what constitutional rights apply to disciplinary proceedings, this Court should grant certiorari to ensure that constitutional protections are uniform across the country.

C.3. Speedy Trial -- Why it must attach?

State courts should be required to provide the attorney a speedy trial. As one court has noted, "[t]he right to practice one's profession is sufficiently precious to surround it with a panoply of legal protection." Giddens v. State Bar of California, 170 Cal.Rptr. 812, 621 P.2d 851, 854 (Cal. 1981). A review of the speedy trial guarantee in the context of criminal prosecutions demonstrates similar rationales support an extension of the speedy trial guarantee to the context of quasi-criminal disciplinary proceedings where a state seeks to deprive an

individual of valuable and cherished rights.

"[T]here appears to have been general agreement among the Framers [of the Constitution] that a speedy trial is essential to fundamental fairness." Dickey v. Florida, 398 U.S. at 39 n.2 (Brennan, J., concurring). As Justice Brennan has noted:

> "a speedy trial is intended 'to minimize anxiety and concern accompanying public accusation.' (citations omitted)... [L]engthy prosecution may subject the accused to 'public scorn and deprive him of employment, and almost certainly will force curtailment of his speech, associations and participation in unpopular causes.' (citations omitted). These disabitlites ... can impair the accused's ability to mount a defense. The passage of time by itself, moreover, may dangerously reduce his capacity to counter the prosecution's charges. Witnesses and physical evidence may be lost; the defendant may be unable to obtain witnesses and physical evidence yet available. His memory and the memories of his witnesses may fade.... '[P]assage of time

> makes proof of any fact more difficult. (citations omitted). Id. at 34.

These concerns are equally present in disciplinary proceedings where prolonged prosecutions may deprive the accused attorney of his ability to adequately defend himself. Indiana and the U.S. Supreme Court have recognized that in criminal actions prejudice can result from loss of defense witnesses and loss of memory which may result in lost record which prevents effective judicial review. (emphasis added). Scott v. State, Ind.App., 461 N.E.2d 141 (1984) which follows directly from Barker v. Wingo, 407 U.S. 514, 33 LEd2d 101, 92 S.Ct. 2182 (1972). Although Scott is a criminal case, the basis for the decision is the serious harm which results from delay. The same rationale applies equally to disciplinary proceedings. On page 143 Scott says,

> "...the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a case, prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown."

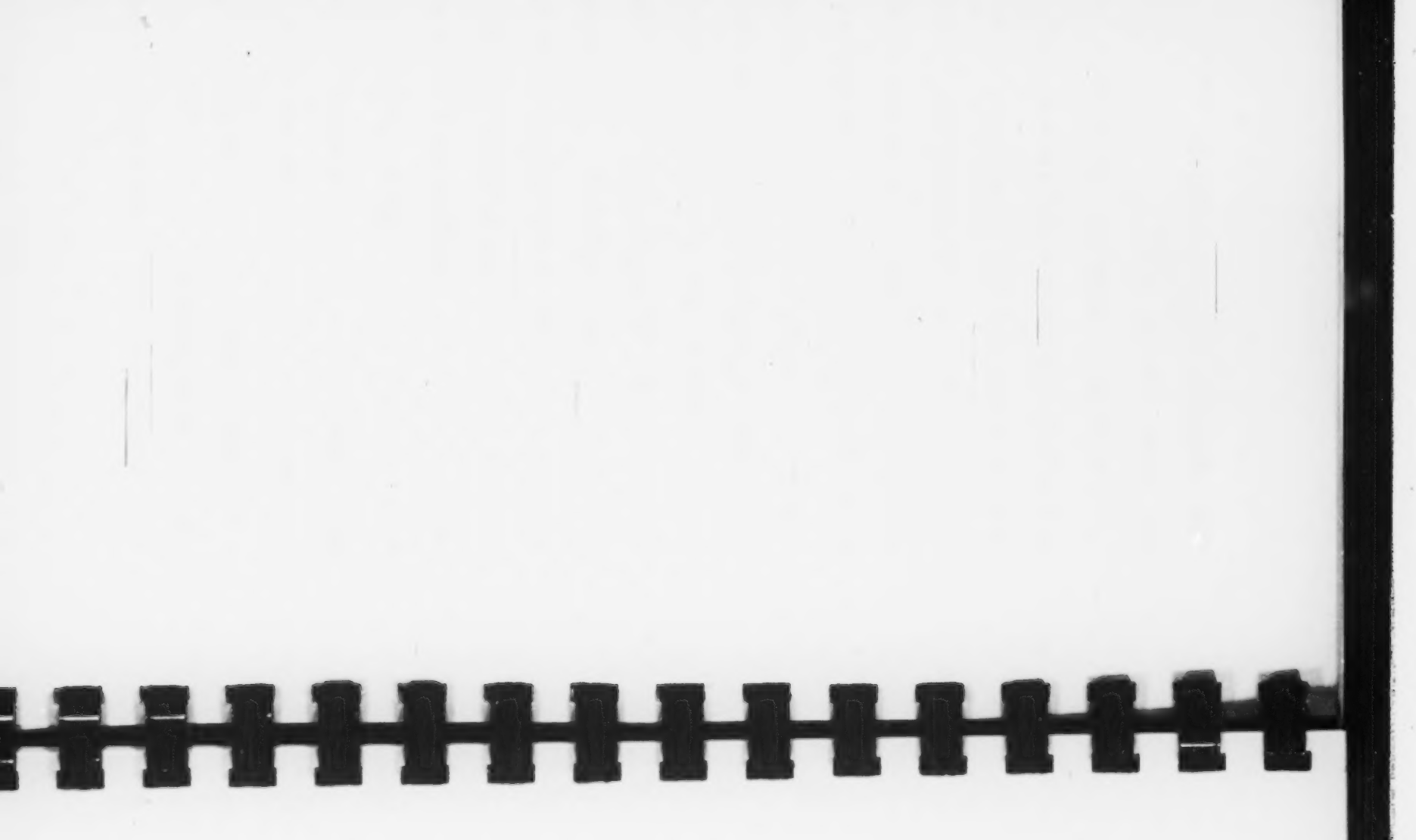
Justice Brennan has further noted that the Speedy Trial Clause also protects societal interests by assuring effective prosecution of cases to "both restrain those guilty of crime and to deter those contemplating it." Id. at 35. The analogy to disciplinary proceedings is apparent as their very purpose is "to protect the public." In re Ruffalo, supra. Lapse in time in disciplinary proceedings "largely nullifi[es] any benefit to the public and the Bar to be achieved by disbarment or suspension...".

The Florida Bar v. Welch, 272 So.2d 139, 141 (Fla. 1972).

Because similar interests will be protected by requiring speedy disciplinary prosecutions as are protected by requiring speedy criminal prosecutions, this Court should now extend the right to a speedy trial to disciplinary proceedings. At present, many states are allowed to prosecute disciplinary actions totally at their leisure by simply asserting that disciplinary actions are not criminal in nature. This greatly prejudices the accused attorney's defenses and does not conform to the "protection of the public" rationale of disciplinary proceedings. This Court should clear-up this situation by requiring that states discipline attorneys in a speedy fashion.

C.4. Due Process -- What process is due -- Why it must attach?

Attorneys are entitled to procedural



due process in disbarment proceedings. In re Ruffalo, supra. At a minimum, due process requires that the accused individual be given notice of the charges and a "meaningful" opportunity to be heard. See Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113, 118-20 (1971). Petitioner contends that when a state unduly delays prosecution of a disciplinary action to the accused attorney's detriment, the state effectively eliminates that attorney's meaningful opportunity to be heard so as to violate the Due Process Clause of the Fifth Amendment.

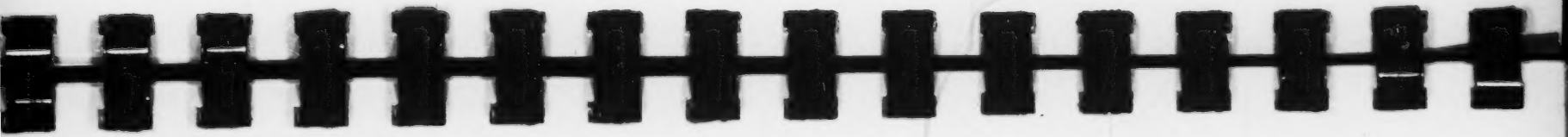
"[A] State must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause." Id., 401 U.S. at 379 (emphasis added). The opportunity to be heard must be granted "at a meaningful time and in a meaningful manner."

Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62, 66 (1965). "The right to a meaningful opportunity to be heard within the limits of practicality, must be protected against denial by particular laws that operate to jeopardize it for particular individuals." Boddie, 401 U.S. at 379-90, 91 S.Ct. 780, 28 L.Ed.2d at 120.

Just as a Statute, "valid on its face, may offend due process because it operates to forclose a particular party's opportunity to be heard," Id., a state may give a hearing which appears valid on its face, but, because of lapse in time, prevents a meaningful opportunity to be heard. Lengthy prosecution can "impair the accused's ability to mount a defense" by causing "witnesses and physical evidence [to] be lost", "memories [to] fade", and " proof of fact[s to become] more difficult," and "loss of effective

judicial review." See Dickey v. Florida, 398 U.S. 30, 42, 90 S.Ct. 1564, 26 L.Ed.2d 26, 34 (1970) (Brennan, J., concurring). When a state delays in affording an accused attorney a hearing which results in the inability to effectively present his defense, the state has afforded the attorney a meaningless opportunity to be heard in violation of the Due Process Clause.

Since disciplinary proceedings can deprive attorneys of their very livelihood, the process due to attorneys during these proceedings must be "substantial." See In re Ming, 469 F.2d 1352, 1355 (7th Cir. 1972). Because "the right of a lawyer ... to practice his profession is often more valuable to him than his home ... when a state seeks to ... disbar a lawyer, it must proceed according to the most exacting demands of due process of law." Law Students Civil



Rts. Res. Coun., Inc. v. Wadmond, 401 U.S. 154, 175, 91 S.Ct. 720, 731, (1971) (Black, J., concurring) (emphasis added); see also In re Bithoney, 486 F.2d 319, 323 (1st Cir. 1973). A disciplinary hearing, held after such a lapse in time that any opportunity which the accused had to present a meaningful defense is lost, does not meet the exacting standards of the Due Process Clause. This Court should now restrain the current unchecked discretion of states in the disciplinary area by demanding that states provide accused attorneys with prompt hearings, so as to preserve their right to a "meaningful" opportunity to be heard as mandated by the Due Process Clause.

Part D

RESPONSIBILITY FOR EXERCISING DILIGENCE AGAINST DELAY IN DISCIPLINARY ACTIONS

Responsibility Rests with the Bar, Not the Attorney, and Unjust Delays Resulting from Lack of Diligence Supports Dismissal of Charges or Mitigation of Sanctions.

Many courts have recognized that delay by a State in prosecuting a disciplinary action has adverse effects both on the attorney and his defense which supports dismissal of the action. See, e.q., Tennessee Bar Asso. v. Berke, 48 Tenn.App. 140, 344 S.W.2d 567 (1960) (long delay unexplained by record coupled with proof witnesses had died or become unavailabe was ground for dismissal); In re Ratner, 194 Kan. 362, 399 P.2d 865 (1965) (charges so stale it was inequitable to act on them). Other courts have recognized that long delays in prosecuting disciplinary actions, results in prejudice to attorneys and is a form of punishment which is a mitagating factor when imposing sanctions. See, e.q., Arden v. State Bar of California, 52 Cal.2d 310, 341 P.2d 6 (1959) (fact proceedings had been "hanging over attorney's head" for three years supported reprimand rather

than suspension); Matter of Swartz, 129 Ariz. 288, 630 P.2d 1020 (1981) (fact matter pending for six years supported censure rather than suspension).

Petitioner contends that the State of Indiana's lack of diligence in the prosecution of his case, which resulted in the proceedings "hanging over his head" from 1977 to 1987, justified the dismissal of the charges against him, or, in the alternative, should have been considered as a mitigating factor when his sanction was imposed.

The fact that an attorney does not demand diligent prosecution of his case should not relieve the State of its burden to do so.

> "[T]he responsibility for excercising diligence in the prosecution rests with the Bar. When it fails in this regard the penalizing incidents which the accused lawyer suffers from unjust delays, might well supplant more formal judgments as a form of discipline. This

> is so even though the record shows that the conduct of the lawyer merits discipline." The Florida Bar v. Randolph, 238 So.2d 635, 639 (Fla. 1970).

Even Indiana has recognized that "the ultimate responsibility for affording speedy trial rights rests with the government rather than with the defendant." Springer v. State, 372 N.E.2d 466, 471 (Ct.App.Ind. 1978) (citing Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972)).

The State of Indiana failed to meet its responsibility to bring Appellant to trial with diligence. This resulted in irreparable prejudice to Petitioner's defense in this disciplinary proceeding. Outside of these proceedings, the Petitioner and his family have suffered harm to family life, sizeable economic losses, loss of reputation, and ten long years of agony and anxiety. (See Part H of this Petition for harm) Although the

Supreme Court of Indiana has termed the delay in Petitioner's case as "incidental" (See Part F of this Petition), an examination of the record shows that Appellant contributed only minimally to the almost ten year delay which it took to process this proceeding. The bulk of the delay was unjustified. See, infra, Part F at 49. For these reasons, this Court should grant Certiorari and terminate, or in the alternative, reduce Appellant's suspension on the basis of the State's delay in the prosecution of the case at bar.

Part E

EXERCISE OF JURISDICTION BEYOND THE TIME LIMIT IS VIOLATION OF RULES AND DENIES DUE PROCESS IN DISCIPLINARY PROCEEDINGS

Long Delay Grossly in Excess of 60 Day Time Limitations for Holding Hearing Under Indiana Disciplinary Rule 23, Section 13 Violated Rules and Caused Court to Lose Jurisdiction and Denied Due Process.

The Indiana Supreme Court recognized the urgencey for conducting Disciplinary

Proceedings when it adopted in its legislative capacity a rule with its 60 day time limitation for holding a hearing in Disciplinary Proceedings. See Disciplinary Rule R.A.D. 23, Section 13. Adopting a Disciplinary Rule is a legislative act. Adjudicating a disciplinary complaint by use of its own disciplinary rule adopted prior thereto is a judicial act. Sup. Ct. of Virginia v. Consumers Union, 446 US 719, 64 L Ed 2d 641, 100 S Ct 1967 (1980).

Once a rule is adopted by a court in its legislative capacity, the same court in its judicial capacity is bound to follow its own rule. Sed Id.

Jurisdiction of any court is three-fold in that it embraces three essential elements: (1) jurisdiction of the subject matter, (2) jurisdiction of the person, and (3) jurisdiction of the particular

case. 7 I.L.E. 407; 21 C.J.S. 37, Sec. 25; 20 Am Jur 2d 449, Sec. 87 et seq. Jurisdiction of the particular case is here called into question. The Indiana Supreme Court and its arms, the Disciplinary Commission and the Hearing Officer totally disregardded the 60 day limitation of its own rule in the instant Briggs case. Processing this case covered about 7 years from grievance to trial; and covered about another 3 years from trial to judgment of suspension totalling almost 10 years. See Part F for discussion on cause of delay. A 7 year delay subject to a 60 day limitation is an attempt by a court to exercise jurisdiction outside of the grant of jurisdiction -- is an assertion of authority not granted -- which causes a court to lose jurisdiction.

Indiana case law has applied the rule "loss of jurisdiction of a particular case" to both civil and criminal cases but

has never applied it to a disciplinary case. Robinson v. State, 359 NE 2d 924 (1977); Lemand v. McComack, 413 NE 2d 228, 246 (1980); Lowery v. State Life Ins. Com., 54 NE 442 (1899); Twyman v. State, 459 NE 2d 705 (1984); Farley v. Farley, 300 NE 2d 375 (1973). In order to prevent lengthy delays in disciplinary proceedings, the Court should declare that the "loss of jurisdiction rule" is applicable to disciplinary cases to guarantee due process of law.

Part F

Overall Delay in this Case Largely Rests With the Disciplinary Commission.

[Please refer to the facts included in the Statement of the Case under Course of Proceedings incorporated herein.]

The over-all delay in processing of this disciplinary proceeding has not been caused by Appellant but has been caused by the Disciplinary Commission, its attorneys, and the Supreme Court itself. All

of the alleged violations relate to Mary Bernice smoker, who died in 1979. Petitioner never has been notifed that he was ever the subject of a grievance in any other matter. It would be difficult to realistically view the delays as scheduling problems of the court or disciplinary commission. Such nomenclature appears to be an attempt to cover-up for the un-precedented almost ten (10) year delay in processing this case from grievance to judgement of suspension.

Part G

REDRESS FOR GRIEVANCE
FOR CONSTITUTIONAL RIGHTS

Why Right to Redress for Grievance Includes Right to Raise Consitutional Issues by Pre-Trial Motions.

Why Right to Redress for Grievance For Constitutional Issues Includes Right to Pre-Trial Hearing or Right to Bifurcated Trial Hearing.

Under Amendment 1 to the United States Constitution, citizens have a right to seek redress of grievance for denial of

fundamental rights. Due Process under Amendments 5 and 14 require it to be timely redress so as to be meaningful.

The Indiana Supreme Court and the Hearing Officer overruled Petitioner's requests for a separate hearing on constitutional issues at pre-trial or bifurcation at trial. He was forced to sandwich-in his numerous constitutional objections at a elngthy trial already under time pressure from complicated issues and multidudinous facts arising from a historical background of 20 years.

The broad extent of denial, of preocedural rights, in this and other Indiana disciplinary actions, is illustrated as follows: If this had been a civil action, a "Motion to Dismiss for delay under Ind. T.R. 41 (E) could have been filed. If this had been a criminal action, a "Motion to Dismiss for delay under Ind. C.R. 4 could have been filed.

Both such motions were not available. Moreover, Indiana has completed the gap in its "Iron Curtain Against Procedural Remedies in Disciplinary Actions." by its disciplinary rule, Ind. R.A.D. 23, Section 24, which provides, "...no motion to dismiss or dilatory motion shall be entertained...." Note that the word "entertained" implies that such motions if filed, will not even be considered. In Indiana a lawyer in a disciplinary action has far less rights than his fellow citizens have under civil or criminal procedure.

The Hearing Officer stated in his Hearing Officer's Report. (App.C-137)

> '....the rules limiting preliminary or dilatory proceedings make fact finding hearings with constitutional or procedural issues to preserve a bit unweildy....'. [he was refering to Ind. R.A.D. 23, Sec. 14(a)]

In Indiana a Hearing Officer, as an

appointee of the Supreme Court is a kind of referee to hear a disciplinary case. See Ind. R.A.D. 23, Sections 13(a), 13(b), 14(a), 14(e), 14(f) and 15(a). He has the duty to conduct a hearing and make findings of facts; to determine whether there has been misconduct and its nature; and to make recommendations as to punishment. In Indiana the only "trial," in the sense it is used in Constitutional Law for due process, is the hearing before the Hearing Officer. The Indiana Supreme Court is the court of original as well as final jurisdiction. It is not required to accept the facts, findings, and recommendations of the Hearing Officer. Although an attorney can file objections after the Hearing Officer's Report, he must do so before he knows if the Supreme Court will accept the Hearing Officer's Report. The "chilling effect" cannot be doubted. There is no appeal to any other

court. In the instant case, Petitioner was irreparably harmed because he was denied the right to have his motions, seeking redress for constitutional protections entertained, and given more than a superficial denial before trial, and (2) He was denied the right to a hearing, to present evidence, and to present oral argument on his constitutional issues, either at a pre-trial hearing or by bifurcation at the trial. Because of these denials by the Hearing Officer and the Supreme Court, Petitioner was irreparably damaged and harmed. He was not granted protection against loss of constitutional rights which could not be eliminated by presententation at the trial. He was denied a fair trial. He was denied a meaningful opportunity to present a complete defense, and he was denied an opportunity to make an adequate record for

effective judicial review. Petitioner has no adequate remedy for monetary damages. Officials who process disciplinary complaints are all immune from lawsuits for damages under Indiana R.A.D. 23, Sec. 20. The Indiana Supreme Court has original and final jurisdiction. There is no provision for appeal. If the United States Supreme Court does not grant certiorari, there is no remedy for seeking protection for constitutional rights. The instant case resulted in irreparable harm: suspension of license to practice law.

Part H

HARM TO APPELLANT IN THIS PROCEEDING

Delay -- Denial of Fair Trial -- Denial of Opportunity to Present Full Defense -- Lost Testimony -- Lost Record -- Loss of Effective Judicial Review -- Denial of Redress of Grievance -- and Irreparable Personal Harm.

Appellant lost testimony of at least twenty-three (23) deceased or unavailable

witnesses. Eventually there were others. The issue was raised before and at the trial, and offers to prove were made by Appellant at the trial. The depositions of Bertha Wolfe (taken by Appellant) and of Mary Bernice Smoker (taken by Disciplinary Commission) were made a part of the record. The issue was again raised in the Petition for Review. In spite of all this notice, it failed "to trigger an inquiry" as to even the existence of serious constitutional problems. Appellant was required to proceed to trial, however it was impossible to make a satisfactory record for effective judicial review. Some concrete examples of lost record here follow. Howard Kirkendall (ill) could have testified as to grievant Smoker's habit of reneging upon promises which relates directly to the issue of Petitioner's "so-called" burden of overcoming the presumption of undue influence

as to an attorney-client employment contract and joint Certificate of Deposit. There was no direct evidence of undue influence. The court hung its hat on "lack of over-coming a presumption." It is improper to use such a presumption in disciplinary cases. This was improper for two reasons. First, inferences and presumptions do not apply in disciplinary proceedings because of the seriousness of the consequences to the attorney. (See 7(A) CJS 50.) And secondly, Hearing Officer Morton based the undue influence on a finding in the Smoker guardianship civil case. This was again wrong because the standard in a civil case is only on a "preponderance," and the standard in disciplinary proceedings in Indiana is "must be clear and convincing." Judge Robert Monro in the civil case admitted that he based the finding of "undue influence" on lack of overcoming the

presumption. (See the Hearing Officer's Report at App.C, page 22, 4th line from bottom.) Smoker (deceased) in her deposition professed lack of any recollection of authorizing the documents. Bertha Wolfe (ill and out of State) could have rebutted the so-called presumption since Mrs. Wolfe and five (5) other witnesses, were present at its execution. Ralph Hanna (deceased), could have testified as to prior Smoker wills which he had prepared. That her educational trusts were her lifetime goal--akin to natural object of her county. He could have testified that Smoker thought her bequests to other lawyers and their families in prior wills to be completely normal and regular.

Mr. Stewart (deceased), attorney for Appellant, could have rebutted Disciplinary Commission attorney Hughes' contention that Hughes and Appellant's

attorney, Stewart, had informally but privately agreed to wait until termination of civil proceedings before going ahead with the disicplinary proceeding. He could have rebutted testimony of Reverend Arthur Schenck as to alleged violations of communicating with others. Smoker, the principal grievant, could have been cross-examined as to the alleged delay of termination of the guardianship proceedings. This violation was not alleged until after Mary Bernice Smoker's death by way of an amended complaint which prevented cross-examination of Smoker on this point at the trial or in her deposition. Clarence Watson (deceased), and Leslie Avery (deceased), were important rebuttal witnesses to Jeanne Jones and Judy McKinnley on the harrassment issue.

Because of loss of memory Mary Bernice Smoker (deceased), in her

deposition of December 1977, only remembered making a 1967 hospital will and a 1970 will but could not remember an in-between 1968 will and circumstances surrounding it.

Petitioner suffered a severe loss of the face to face testimony of the very credible witness Bertha Wolfe, Secretary in the Briggs Law Office at the time the 1968 and 1970 Smoker Wills were made. She was elderly, ill, and out of State by the time of trial. Her deposition was taken before the Disciplinary Commission filed its second Amended Complaint. In the presence of Smoker, Wolfe took down the information for preparation of the Smoker wills. Additionally Wolfe and Smoker listened to Appellant dictate large portions of both the 1968 and 1970 wills. Wolfe could have testified that Smoker had the rough drafts in her hands at her home and read them over carefully. Wolfe could

have testified as to circumstances surrounding preparation of the wills and disclosure and advice by Briggs to Smoker. All of this had such a tremendous bearing on the attorney disclosure requirements of the vague and uncertain language of the old pre-1970 ABA Canons upon which the alleged violations in the second Amended Complaint as to preparation of the 1970 Smoker will. (App.A-6 and App.C-86).

As examples, Appellant had to disprove that he failed to give "full disclosure." He had to disprove that he had acted "without consent of his client and that he had not failed to make full disclosure." He had to disprove that "he failed to disclose to the client all the circumstances."

The Kutak Commission of the American Bar Association on Evaluation of Professional Standards has determined that

even some of the 1971 Disciplinary rules are incapable of definition, are imprecise and are not useful as a guide for conduct. The void-for-vagueness doctrine is discussed in the case of Kolender v. Lawson (1983)461 U S 352, 75 L Ed 2d 909, 103 S.Ct 1 855, See annotation commencing at 75 L Ed 2d 1049.

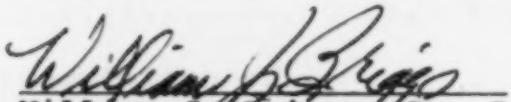
Joseph T. Ives Jr, an attorney who at one time represented Briggs, testified at the trial that Copenhaver, attorney for the Disciplinary Commission, had said that the Commission wanted to make Briggs a test case in order to obtain a ruling on "just how far an attorney could go before he had to throw his client, who wanted to make a gift to him, out of his office." Subsequent action by the Indiana Supreme Court indicates that the Indiana Supreme Court had already recognized (before entering judgment in January of 1987 on Appellant's case) the vagueness of old

Canons and Indiana Disciplinary Rules. This same court denied Appellant the right to be protected from such vagueness. The Indiana Supreme Court adopted a completely new rule effective in 1987 to obviate the vagueness and uncertainty of its former rule. The new 1987--rule 1.8 designated as "CONFLICT OF INTEREST: PROHIBITED TRANSACTIONS" reads, "A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee." A comparison of the old Canons with the new rule 1.8 (Supra) demonstrates the uncertainty and vagueness by which the old Canons failed to provide an explicit and ascertainable guide upon which an attorney could measure his conduct and duties to his client. The

testimony of Bertha Wolfe could not be made a part of the record.

The long delay in processing this action caused irreparable harm to Petitioner in his defense, including loss of testimony of many key witnesses, loss of memory of many others, denied the right to present a complete defense, and denied the right to an adequate record for judicial review ultimately denying Appellant a meaningful opportunity to present his defense, fair trial and equal protection.

Respectfully Submitted



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APPENDIX

The Appendix is bound separately, however a table of contents is set out here for convenience.

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CERTIFICATE OF SERVICE AND MAILING

I, William J. Briggs, being first duly sworn upon oath, hereby certify that the original and 39 additional copies of the annexed Petition for Writ of Certiorari was mailed by me, next day service, postage prepaid, addressed to the:

> Office of the Clerk, Room 30,
> United States Supreme Court,
> Washington, D.C. 20543

I made such mailing on the 11th day of June, 1987, by depositing same for mailing at the office of Federal Express, 731 Navco Drive, Lafayette, IN 47905.

I further certify that I mailed 3 copies of the same pleading by ordinary mail with first class postage prepaid, to each of the following persons or entities, to-wit:

> 1. Disciplinary Commission of the Supreme Court of Indiana, to the attention of Mr. David Hughes, Attorney, ISTA Building,

150 W. Market Street, Room 814, Indianapolis, IN 46204.

2. Attorney General, State of Indiana, State House, Indianapolis, IN 46204.

I further certify that I mailed 1 copy of the same pleading by ordinary mail with first class postage prepaid, to the following person, to-wit:

3. Chief Justice, Randall T. Shepherd, Supreme Court of Indiana, State House, Indianapolis, IN 46204.

I further say that I made such mailings to the last 3 entities or persons by depositing same for mailing on the 11th day of June, 1987 in the United States Post Office.

I further say under the penalties of perjury that the above facts are true.

William J. Briggs

William J. Briggs
Petitioner
P.O. Box 2
Flora, IN 46929

STATE OF INDIANA
SS:
COUNTY OF CARROLL

Subscribed and sworn to on this the 11th day of June, 1987.

Teresa A. Rush
Notary Public

My Commission Expires:
September 14, 1990
Resident of Carroll County, Indiana